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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF: FREEDOM OF EXPRESSION

Report of the Special Rapporteur on the protection and promotion of the right to freedom of opinion and expression

Mr. Abid Hussain

Report of the mission to Hungary

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Introduction

1. This report has been prepared pursuant to Commission resolution 1998/42. It presents and analyses information received by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression during his visit to Hungary from 9 to 13 November 1998, as well as information received from individuals and non-governmental organizations concerning matters relating to the right to freedom of opinion and expression.

2. By letter dated 27 May 1998 addressed to the Permanent Mission of Hungary to the United Nations Office at Geneva, the Special Rapporteur sought the agreement of the Government for a visit to Hungary. On 10 June 1998, the Government of Hungary granted this request.

3. The Special Rapporteur would like to express his gratitude for the cooperation extended to him by the Government of Hungary in discharging his mandate. He highly appreciates the assistance received from the Government in the organization of his visit. He would like to convey his gratitude, especially to the Minister for Foreign Affairs and his staff, who helped make this visit successful.

4. During his visit, the Special Rapporteur met with representatives of the Government, members of Parliament and the judiciary, as well as with two ombudsmen. He also met with representatives of non-governmental organizations active in the field of human rights, academics, writers, professionals of the media sector and other members of civil society who were of interest for his mandate.

5. A list of persons with whom the Special Rapporteur met during the visit is contained in the annex to this report. The Special Rapporteur would like to take this opportunity to thank those he met for their generous efforts to assist him during his visit to Hungary.

I. BACKGROUND AND CONTEXT

6. Since the end of the communist regime in 1989, Hungary has embarked on a large-scale transition from an authoritarian to a more democratic State which has led to profound political, economic and social changes. During the decade of the regime under Janos Kadar which followed the 1956 revolution, Hungary was considered as the most liberal of the Eastern European countries. The breakdown of the one-party State became an irreversible process and Hungary was proclaimed a republic on 23 October 1989. Hungary rapidly adopted a democratic system and a market economy. This process has been accompanied by a far-reaching review and revision of the entire legal system, including the amendment to the Constitution in October 1989.

7. Parliamentary elections were held in May 1998 and a new Government, led by Prime Minister Viktor Orban of the Federation of Young Democrats/Hungarian Civic Forum Smallholders Party, was formed on 8 July 1998. One of the major tasks of the new Government is to continue the dialogue with Europe initiated earlier with a view to Hungary joining the European Union and the North Atlantic Treaty Organization (NATO), for which two accession agreements were concluded in March 1998 and December 1997, respectively.

8. An important element in the transformation of the political order has been the removal of restrictions on freedom of expression and the media, particularly the lifting of censorship and the abolition of a one-party monopoly over the mass media. To that end, the mass media in Hungary have undergone perhaps the most radical change in the Central and Eastern European countries by embarking upon a process of privatization of the press and overall democratization. Today the print media are completely privatized and the electronic media are made up of a mixture of State-run and private enterprises. In the area of broadcasting, the most significant development was the adoption of the Media Act in 1996, which introduced a legal framework for a liberal broadcasting landscape. In present-day Hungary, the media market is flourishing with a large number of national and foreign newspapers and magazines, as well as private and radio services.

II. PRINCIPAL CONSIDERATIONS AND CONCERNS

A. Legal framework

9. In this section, the Special Rapporteur will briefly consider some aspects of the international and national legal framework governing the protection of the right to freedom of opinion and expression in Hungary.

1. International obligations

10. Hungary has accepted a wide range of international obligations in the field of human rights. It is a party to the International Covenant on Civil and Political Rights, including its two Optional Protocols. Furthermore, Hungary ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms in 1992, as well as the right of individual petition.

11. In its capacity as participating State of the Organization for Security and Cooperation in Europe (OSCE), Hungary accepted many additional international commitments. These include the 1975 Helsinki Final Act, the 1990 Charter of Paris for a New Europe, the 1990 Copenhagen Document and the 1994 Budapest Document.

2. National legislation

12. In the past few years, new laws have been drafted and passed by the Hungarian Parliament providing the legal framework for the creation of a democratic system and of a liberalized market environment.

(a) The Constitution

13. In contrast to other former socialist countries, the transition in Hungary can be described as an approach of change with continuity, attributable to the fact that there was no revolution in 1989 totally sweeping away the Constitution of the former regime. As noted above, the Constitution of the Republic of Hungary, promulgated on 20 August 1949, was amended in 1989 in order to facilitate the transition to a constitutional State and to establish a multi-party system, a parliamentary democracy and a social market economy.

14. Article 61 of the Constitution provides for freedom of opinion and expression as well as for freedom of the press. Limitations on or suspension of these rights can be imposed solely during a state of national crisis, emergency or state of danger, in pursuance of article 8 (4) of the Constitution.

(b) The law on the press and other mass media

15. The 1986 Press Act, which ensures the right of everyone to disseminate his or her ideas in printed form, is still in effect despite several amendments.

16. Under Act XI of 1990 which amended the Press Law, committing a crime or instigation to commit one, degeneration of public morals and lack of respect for the personal rights of others are the only limitations on the freedom of the press. That amendment also entitled any person, natural or juridical, to establish a periodical, a local radio station or a television studio, whereas the previous legislation recognized this right only for the State, social and economic organizations and for associations.

17. Appointment of the heads of public media (Hungarian Radio, Hungarian Television, Hungarian News Agenda) was a government prerogative until July 1990. With a view to achieving a fuller implementation of freedom of the press, Act LVII of 1990 empowered the President of the Republic of Hungary to appoint the heads of these institutions. However, the countersignature of the Prime Minister is required for the exercise of this power.

18. In 1996, a new media law governing radio and television broadcasting was adopted by the Parliament. The objective of Act I on Radio and Television Broadcasting is to ensure: (i) free and independent radio and television broadcasting; (ii) the freedom to disseminate objective and impartial information; (iii) the promotion of culture at the national and international levels; (iv) the prevention of the creation of a monopoly in the provision of information. The Act also provides for the establishment of some institutions and authorities to promote its implementation. Under this Act, all electronic media are overseen and monitored by the independent National Radio and Television Commission (ORTT), a legal entity under the supervision of Parliament. ORTT members are nominated for four years by the Parliament by majority vote, while its President is designated jointly by the Prime Minister and the President of the Republic of Hungary.

19. ORTT was created to ensure the independence of the programme suppliers and to promote and safeguard the freedom of expression by encouraging new programme suppliers to enter into the market, by dismantling the existing information monopolies and preventing the creation of new ones. ORTT has set up a Complaints Committee with a five-year mandate for dealing with complaints in relation to violation of the principle of impartiality of information. Anyone may present objections at this forum concerning the programmes of any broadcasting company and the broadcaster who violated the law must publish the findings of the Complaints Committee without explanatory comments, or propose that the complainant present his view. Serious violations can also result in fines (arts. 49 and 50 of the Media Act).

20. Finally, Act LXXII on Telecommunications of 1992 and Act LXII on Frequency Management of 1993 allowed Hungary to enter the era of new communication. Through these laws and the privatization of telecommunication companies, Hungary developed its telecommunication infrastructure both in terms of quantity and quality. According to the Hungarian Telecommunications Regulatory Environment Authority, whose task includes broadcasting and frequency management, the telephone density in Hungary increased from 8 main lines per 100 inhabitants to 30.4 in 1997, and the number of Internet host computers and terminals has doubled in recent years (from 0 per 1,000 inhabitants in 1990 to 46 in 1997). However, Internet equipment is used more by private companies than by individuals.

(c) Other legislation with a direct impact on the exercise of the right to freedom of opinion and expression

21. Act LXV on State Secrets and Official Secrets of 1995 provides for two cases of State secret: data constitute a State secret when the classifier has determined beyond doubt that their disclosure before the end of the effective period (maximum 90 years), acquisition or withholding from a person entitled to them would violate or threaten the interests of Hungary in terms of national defence, national security, criminal investigation and prevention of crimes, the monetary and currency policy, foreign and international relations, and judicial procedure (art. 3). Official secret means any data whose disclosure before the expiry of validity and unauthorized acquisition or whose use and delivery to an unauthorized person would interfere with the operation of a body fulfilling a State or public function and would prevent it from exercising its official function and authority free from influence.

22. Act LXIII on the Protection of Personal Data and the Publicity of Data of Public Interest of 1992 qualifies personal data concerning racial origin, belonging to a nation or nationality, or ethnic affiliation as special data and provides increased protection to it. According to the provisions of the Act, personal data concerning political opinion or party affiliation, religion or other belief, health condition, pathological addiction, sex life and criminal record are also qualified as special data. A person who unlawfully makes public, or without authorization uses or makes available for non-authorized persons special data as defined in the law, commits the crime of "abuse of special personal data" and shall be punished with deprivation of liberty of up to three years. This Act has also established the Data Protection Commissioner (also known as the Data Ombudsman), a unique institution in the Eastern European region.

23. Act XXIII on Background Checks for Individuals Holding Certain Key Offices of 1994 aims at discovering whether public officials and others occupying key positions in public life have, prior to the new regime, carried out activities for State security organs or obtained data therefrom to assist them in making a decision. If, during the course of a background check, an individual is found to have carried out such activities, the results will be published unless he or she agrees to resign. This Act also applies to those responsible for influencing public opinion, that is persons involved with the media.

3. The establishment of new institutions

24. The cornerstone of the introduction of the rule of law in Hungary is the establishment of the Constitutional Court, in accordance with chapter IV of the Constitution, which began its work on 1 January 1990. Among other things, the Constitutional Court is responsible for determining the constitutionality of statutory provisions and the preliminary examination of certain provisions of draft laws in order to prevent Parliament from adopting laws contrary to the Constitution. The provision - particularly important in case of the violation of any of the rights recognized in the international human rights instruments - allows any individual to lodge a complaint with the Constitutional Court, provided that all other remedies have been exhausted or no other remedy is available, alleging that his rights have been violated by the application of an unconstitutional provision of law.

25. As mentioned above, the Hungarian Constitution was amended and the presence of certain elements of the old Constitution required the Constitutional Court to take a larger role in developing and strengthening the protection of the freedom of opinion and expression. The jurisprudence of the Constitutional Court has significantly enhanced the designation, content, restrictions, as well as the conditions, guarantees and protection of the practice of the freedom of expression. During a meeting with a judge of the Constitutional Court, it was mentioned that in a number of rulings, the Constitutional Court described the independence of public-service media from the State and from politics. In one of its decisions, the Court stated that the State has an obligation to promote and protect freedom of opinion and that freedom of expression is at the top of the hierarchy of all human rights. The Constitutional Court has also passed important rulings on racist and other "hate speech", as well as on the limits of criticism, and has enlarged the right of an ordinary citizen to criticize a public figure.

26. On 30 June 1995, three commissioners were elected by the Parliament: the Parliamentary Commissioner for Civil Rights, the Parliamentary Commissioner for Data Protection and Freedom of Information and the Parliamentary Commissioner for Ethnic Minorities. The commissioners are elected for a period of six years and enjoy broad authority. Their function is to receive petitions or complaints that they investigate in order to give their opinion and recommendations. The Special Rapporteur met with two of the three ombudsmen: Prof. Katalin Gönczöl, Parliamentary Commissioner for Civil Rights, and Mr. László Majtényi, Parliamentary Commissioner for Data Protection and Freedom of Information. The Parliamentary Commissioner for Civil Rights investigates violations of constitutional rights and can initiate general or specific individual measures for remedying them. The Commissioner has examined cases of violations of freedom of opinion and expression, in particular relating to the army, where the limits on this right are different from those existing in civilian society. The investigation conducted by the Commissioner's Office brought to light the fact that the areas of activity to enforce rights are not precisely defined; thus, criticism of acts of superiors is generally prohibited beyond what is specifically guaranteed by law. This regulation consequently narrows down the right to freedom of opinion. However, most of the cases with regard to freedom of expression are examined by the Commissioner for Data Protection (see para. 51).

27. These institutions of ombudsman are complementary to the Human Rights, Minorities and Religious Affairs Committee of the National Assembly. In this regard, the reports of the three ombudsmen are debated by the plenary session of the National Assembly after having been discussed by the above-mentioned committee.

28. As regards the judiciary, the Special Rapporteur had the opportunity to meet with the National Council of Justice, an independent organ, which since October 1997 is administrating the court system instead of the Ministry of Justice. In this regard, the judges and the administration are more independent than in many other countries. The National Council of Justice is composed of 15 members headed by the President of the Supreme Court and served by an administration of 100 persons.

B. Principal observations and concerns

1. The media

29. In order to assess the situation of the right to freedom of opinion and expression in Hungary, the Special Rapporteur met with a large number of media professionals, as well as with members of the two journalists' associations: the Association of Hungarian Journalists (MUOSZ) and the Community of Hungarian Journalists (MUK).

(a) The print media

30. Since 1989, the print media have gone through a significant transformation of the structure of the press and of journalism itself. The print media are today completely privatized and thus enjoy a high degree of independence. All the major print media - national and regional newspapers, magazines and tabloids - are in private hands and some are part of foreign media companies. Although the press is, by and large, free of all controls, the Special Rapporteur was informed of a certain number of issues and controversies which deserve particular attention.

31. The Special Rapporteur noted that a predominant concern was the difficulties arising from the transition from a State monopoly over the media to a system governed by a free market, and the prevailing financial constraints. One concern expressed to the Special Rapporteur was the pre-eminent role played by foreign capital in the media industry. Indeed, the biggest Hungarian newspapers are owned by German and Swiss groups. According to several sources, the intervention of foreigners was very positive after 1989 to gain more freedom, but today, some consider this foreign ownership excessive. However, no evidence of foreign owners' interference with editorial content was brought to the attention of the Special Rapporteur.

32. In addition to this, there is a proliferation of newspapers which cannot survive without the support of private or State sponsors, as well as advertising. A total of 45 national and regional newspapers are published on a daily basis in Hungary. The Special Rapporteur considers that too many actors in the media field make the press very vulnerable financially and more

receptive to outside interference. For that reason, the Special Rapporteur is concerned over the financial dependence which can diminish freedom of expression.

33. In this regard, a recent case on the question of financing of the media was raised before the Special Rapporteur during his visit. On 30 September 1998, the newspaper Kurir was forced to suspend publication after its owner, the Postabank, ceased financing the daily. Another independent weekly, Magyar Narancs, suddenly lost its financing. On 7 October, the Minister of Culture banned publication of Kurir, explaining that the newspaper was published illegally. The Postabank, a Government-controlled bank, also owned five other publications which continue to be published regularly. According to the information received by the Special Rapporteur, the closing down of the two newspapers was done in a very selective way. Kurir and Magyar Narancs were known for their criticism of the Government, which leads one to suspect that political motives were behind the closing down of the two newspapers. On the other hand, the bank maintains its financial support to the other newspapers, which are closer to the Government.

34. This case also raises the concern expressed by certain sources over political interference. The Special Rapporteur noted that journalists are still strongly influenced by political parties. At most editorial offices, journalists feel exposed to dependency relations with owners wanting to influence the daily work and reserving the right to manipulate the provision of information according to their own political interests. A recent survey 1/ indicates that in nearly 40 per cent of journalists' workplaces it occasionally or sometimes frequently occurs that a political lobby tries to pressure editorial offices not to publish an article or programme. The strongest pressure is directed at the daily papers and more particularly on the political press which has wide-ranging influence.

35. Another controversy which was brought to the attention of the Special Rapporteur is the recent proposal of Mr. Béla Pokol, Deputy of the Smallholder's Party and President of the Constitutional Committee, to amend the Code of Civil Procedure with a provision to guarantee the right of reply. Mr. Pokol is in favour of depoliticization and lessening the dependency of the press on financiers, and he thought that his proposal could be a solution. The National Association of Hungarian Journalists (MUOSZ) viewed the proposed legislation as "unconstitutional, a brutal attack against freedom of opinion, and also a starting point of a process of intimidation of the media". In fact, journalists refused to be forced by the law to publish rectifications not only of facts but also of opinions published in the media. The controversy surrounding the proposal and the lack of support of its own coalition led Mr. Pokol to withdraw it. Nevertheless, the Code of Conduct elaborated by MUOSZ allows for a right of reply for "a person who is directly and detrimentally affected by an article or programme item". The Special Rapporteur is of the view that if a right of reply system is to exist, it should ideally be part of the industry's self-regulated system, and in any case can only feasibly apply to facts and not to opinions.

1/ Journalists, press workers, day-labourers by Maria Vasarhelyi.

36. Finally, the Special Rapporteur received information from various sources noting that investigative journalism is quite weak in Hungary. According to several sources, journalists rarely debate or argue against the Government. Some of the persons the Special Rapporteur met indicated that most of the journalists did not perform their work skilfully. The fact that four out of five journalists started their career in the era of dictatorship might have inevitably marked both the mentality and the performance of Hungarian journalists.

(b) The broadcast media

37. The role of television in the transition process is to be regarded somewhat differently from that of the print media in the privatization process, given a number of additional constraints of a technical as well as financial nature.

38. The electronic media were first regulated by the 1986 Press Act, which kept silent about the fact that Hungarian Radio and Television and the Hungarian News Agency (MTI) were special monopolistic institutions of the Hungarian media. In the case of Hungarian Radio and Television, the Act merely stated that it was the only institution allowed to produce radio and television programmes. After 1989, the new legal regulations relating to the media were considered one of the key issues in the democratic transition process.

39. The Special Rapporteur was informed that before the adoption of the Media Law in 1996, freedom of the media was very limited since applications for new licences to broadcast new programmes were denied for a fairly long period on grounds of a frequency moratorium imposed by the Government. Between 1990 and 1994, a so-called "media war" broke out between the Government on the one side, and the President of the Republic and the opposition on the other. During this period, the Special Rapporteur sent an allegation to the Government of Hungary, on 1 September 1994, to express his concern over the dismissal of 129 journalists of Magyar Radio on 3 March 1994 and of 12 journalists of "168 hours", a popular weekly political production of Radio Kossuth, one of the three national broadcasting stations. According to the journalists, the dismissals were an attempt to silence criticism of the Government two months before the scheduled national elections. The Government provided the Special Rapporteur with a reply on 17 October 1994, informing him that the situation of the 141 journalists had already been resolved, since all the journalists having not attained the age of retirement established by law had been reinstated with appropriate reimbursement of their salaries (see E/CN.4/1995/32, paras. 113 and 114).

40. Since there was no media law until 1996, the Constitutional Court found itself in the role of arbitrator and made a number of important rulings on the subject of a balanced electronic media market, as well as on independence from the State. These legal elements were later incorporated into the final version of the Media Law by the legislators.

41. Parliament passed the Media Act in 1996 creating institutions designed to foster free and independent electronic media. The law provided for the creation of nationwide commercial television and radio, and insulated the

remaining public service media from government control. With the adoption of the 1996 law and the subsequent licensing of private electronic media, the media landscape in Hungary changed substantially. The private and the public sectors are now coexisting. Since the National Radio and Television Commission (ORTT) started working, two private TV stations (RTL Klub and TV2) and a number of local TV stations have been licensed, as well as nationwide regional and local radio stations. The former State radio stations now operate as public broadcasters. Hungarian radio as well as Duna TV provide programmes for the 5 million Hungarians living abroad.

42. Several concerns have been expressed with regard to the area of television broadcasting. The Special Rapporteur's attention was drawn to the fact that the two largest State-owned TV stations - MTV and Duna TV - are suffering from the competition of cable and satellite TV stations as well as from the new commercial TV, which is becoming increasingly popular. Since MTV is facing serious financial problems, a 500-million-forint loan was granted to the channel by ORTT from the Broadcasting Fund. The financial resources of this special fund, which was set up under the Media Act, come, among others, from broadcasting fees. Its aim is to support public service broadcasting and programmes, as well as public and non-profit broadcasters, to preserve and further develop culture. The Special Rapporteur is concerned over the fact that this financial dependence of the State TV could lead to an increasing loss of autonomy of the programmes. A blueprint should be worked out to ensure autonomy for a period of time and to find an alternative solution.

43. Concern was also expressed by the academic community about the loss of quality in Hungarian TV. According to the information provided to the Special Rapporteur, the level of political debate is getting lower because of the increase in soap-operas and series from Western Europe and the United States. Since the influence of TV is very high in Hungary (Hungarians watch more TV than any other Europeans), fear has been expressed over the stagnation, or even lowering, of the level of culture and a loss of Hungarian identity. The Special Rapporteur's answer to the fear of globalization is that the Government should be able to manage - and not to control - what some call the "commercial invasion".

44. Nevertheless, the Special Rapporteur notes with satisfaction that there are a certain number of talk shows on human rights issues broadcast on Hungarian TV. During a meeting with the Vice-President of MTV, the Special Rapporteur encouraged him to promote even more this type of programme on themes such as neglect of children, gender inequality, and even controversies relating to the freedom of opinion and expression.

45. As mentioned above, ORTT members are nominated by the parliamentary parties and elected by the Parliament, while the President of ORTT is nominated jointly by the State President and the Prime Minister. While this arrangement gives the parties a position in the media landscape which some regard as too dominant, it also provides for representation of both governing and opposition parties. As a result, most parties had no complaints about media coverage of the last election campaign (10-24 May 1998), which was observed by an OSCE Election Observation Mission. However, the Special Rapporteur notes the controversies that have arisen with regard to allegations that ORTT, during its first year and a half of operation, was politically

biased in awarding television licences. Some journalists alleged that it institutionalized political party influence in the running of the media. Others have criticized ORTT for its attempts to acquire a share of the National Broadcasting Company, thereby becoming an owner in the industry it regulates. Two lawsuits have been filed against the ORTT, in both cases raising the question of whether the Board is truly insulated from politics as intended by the law.

46. The Special Rapporteur considers that public radio and television should be independent of the State as well as of the Parliament, the political parties and any other social groups. The legislation must exclude the possibility of State authorities or of any groups influencing the programmes in such a way that would damage the balance, free expression and impartiality of information. If the new legislation has contributed to separating the broadcast media from the influence of the State, they nevertheless remain dependent upon political parties. In particular, the Special Rapporteur would recommend a stronger autonomy for ORTT in order to avoid too much politicization of this body and to enhance its professional character. At the same time, the Special Rapporteur must recognize that the Media Act constitutes great progress in the field of freedom of opinion and expression in Hungary.

2. Other concerns relevant to the promotion and respect for the right to freedom of opinion and expression

(a) Legal restrictions on freedom of expression

(i) **State secrets**

47. The right to freedom of opinion and expression includes the right to seek and receive information, which also means that citizens have the right to get information of public interest and have the right to inspect official documents. While journalists have a professional and moral obligation to expose data of public interest, they must also be aware of the restrictions and sentences imposed by criminal law.

48. The Special Rapporteur was informed that under Hungarian law, a document can only be "secret" or "non-public" if it has been so classified through an official procedure by competent bodies or persons and authorized by statutory means, or if the publication of a particular document has been restricted by law. The unlawful acquisition and processing of a State secret, its disclosure to an unauthorized person or its denial to a person entitled to it carries a sentence of one to five years' imprisonment. Involuntary violation of a State secret is also punishable with imprisonment for one year.

49. In this regard, the Special Rapporteur was informed that the editor in chief of Nepszava (People's Voice) published before the election in May 1998 the draft agreement between Hungary and Slovakia on the construction of a hydroelectric dam on the Danube. This contract was a sensitive issue which involved the Hungarian Socialist Party. According to the information received, a police investigation was initiated and the secret police came to the newspaper office as publication was considered to be a violation of the State Secrets and Official Secrets Act. The editor in chief complained to the Commission for Data Protection and Freedom of Information who investigated the

case and issued a decision saying that the editor had not committed any crime; on the contrary, he had served the best interest of the public who had to be aware of this agreement. Some time later, eight editors in chief published a declaration in the press to defend their colleague from Nepszava. The Special Rapporteur was told of the alleged political interests involved in this case and is very appreciative of the fact that there was redress available.

50. Several journalists also complained about the fact that some of the parliamentary sessions are closed although there is no reason for this. The Special Rapporteur agrees that certain meetings or negotiations can obviously not be open to the public but access to information should be made available as much as possible. It seems that secrecy is part of the inherited legislation of former socialist countries in which power and statecraft played a central role, while the protection of the personality was pushed into the relative background.

(ii) **The issue of data protection**

51. Personal data are protected by the Constitution and by Act LXIII on the Protection of Personal Data and the Publicity of Data of Public Interest of 1992. According to article 2, paragraph 3, of this Act, "Data of public interest means any information under processing by an authority performing State or local self-government functions or other public duties, except for personal data". These data of public interest can be accessible to anyone, except when they are classified as secret data or if their publication is restricted by law.

52. The 1992 Act gives the legal basis for the nomination of the Parliamentary Commissioner for Data Protection and Freedom of Information, or Data Ombudsman, who is a State official with a high degree of legitimacy since he is elected by a two-thirds majority in Parliament. Besides monitoring both data protection and freedom of information in general, the Data Ombudsman's task includes the investigation of complaints, the maintenance of the Data Protection Register, and the giving of opinions on data protection and freedom of information-related draft legislation and on each category of official secret. The Ombudsman makes recommendations on the extension or limitation of the criteria for classifying data and, according to the Secrecy Law of 1995, is entitled to change the classification of State and official secrets as well.

53. The Special Rapporteur's attention was drawn to the fact that the legal relationship between data protection and the media should be improved. In this regard, the Data Ombudsman reached a "gentleman's agreement" in 1996 with the National Police Chief and a group of journalists from MUOSZ to concentrate on the protection of the presumption of innocence and the personal rights of the victims, while striving to sustain the freedom of the press to inform the public.

(iii) **The "Lustration Act"**

54. Act XXIII on Background Checks for Individuals Holding Certain Key Offices of 1994, or Lustration Act, is a typical product of the change under way in the former socialist countries of Eastern and Central Europe, with the

difference that it neither declares incompatible the holding of past and present office, nor proposes to unveil the whole of the previous system of political informing. The Special Rapporteur was informed that this Act promotes transparency and publicity rather than punishment of those in prominent political and other public roles. In fact, those found to have belonged to the former regime are not automatically dismissed from their post.

55. It was brought to the Special Rapporteur's attention that, further to petitions seeking the review of the constitutionality of the above-mentioned Act, the Hungarian Constitutional Court passed a decision (decision 60/1994 of 24 December 1994) in which it declared, inter alia, that data and records on individuals holding positions of public authority and those who participate in public life be considered as information of public interest, as provided by article 61 of the Constitution. Furthermore, the Court declared unconstitutional and discriminatory the fact that the Act applies to the members of the public print media, who can be subject to a background check, and not to members of the Hungarian electronic media.

56. During the mission, the Special Rapporteur was informed that members of Parliament intend to present an amendment to the Act to extend its application to all journalists. The Special Rapporteur is of the view that this law could be used in an arbitrary fashion since journalists could be brought to public attention on the basis of unproven information and could eventually turn out to be innocent. As the media are becoming more and more important in Hungarian society, this law could be misused to silence some journalists selectively.

(b) The minorities

57. Among the 13 ethnic minorities recognized in Hungary, the Roma constitute the largest and the most sensitive group. For this reason, the Special Rapporteur wishes to concentrate on this specific ethnic minority and assess their exercise of the right to freedom of opinion and expression.

58. Act LXXVII of 1993 on the Rights of National and Ethnic Minorities establishes the concept of collective rights of minorities. It explicitly permits organized forms of limited self-government in areas where ethnic groups constitute a majority. This Act, as well as the 1996 Media Law, ensures that public service TV and radio produce and broadcast minority programmes in order to promote the languages and cultures of the national and ethnic minorities in Hungary. The creation of the Parliamentary Commissioner for National and Ethnic Minorities is another positive step in favour of the protection of the rights of minorities in Hungary.

59. The last annual report of the Ombudsman on Minorities which was provided to the Special Rapporteur indicates that as regards the number of complaints from each minority, the majority were Roma (63 per cent). A large number of complaints were related to the administration of justice and some of the cases provoked serious debate in the media among journalists and others. The Ombudsman noted that information in the media about Roma cases fails to be objective, which tends to encourage prejudice.

60. Indeed, the Special Rapporteur's attention was drawn to the fact that the Hungarian media have not been able to alleviate the prejudices of the majority population against Roma. In fact, the Special Rapporteur was told that the media coverage of the Roma is strongly dominated by stories of conflicts and problems. Also, participants are forced into passive roles and are not given the chance to articulate their opinions in the media reports. According to the Roma themselves, they regret being represented by the media only in specific minority-related roles, and rarely as integrated and active participants in society.

61. Nevertheless, the Special Rapporteur considers that in Hungary, the Roma's access to - and their image in - the media is better than in some other countries of Central and Eastern Europe. The Roma and minorities in general have satisfactory access to information. Indeed, in today's Hungary, there are minority-language print media, and the State-run radio broadcasts programmes in the mother tongue of major nationalities, i.e., Slovak, Romanian, German, Croatian and Serbian, for two hours daily. As far as Roma are concerned, eight Romani papers are published and Hungarian TV broadcasts a 25-minute weekly programme and a 30-minute programme on Hungarian Radio. For the TV programme, the Special Rapporteur would recommend a better time slot as it is broadcast on Monday at 2 p.m. and on Saturday morning at 9 a.m. However, the Special Rapporteur notes that the Hungarian programme "Napkelte" appears to be sensitive to Roma issues since Roma representatives are often invited. Furthermore, the Special Rapporteur was informed that the presence of the Roma in the Hungarian press - which was previously a taboo topic - has recently shown a remarkable increase in terms of frequency and emphasis of their coverage.

62. With regard to the minority print media, concern was expressed over the financial pressure they suffer, as well as the fact that they are under greater control of the Government than the Hungarian media in general. The other problem raised by the source is that, owing to their low educational level, most Roma get their information from television, fewer listen to the radio and only a limited number read newspapers.

63. Finally, the Special Rapporteur considers that more has to be done to integrate minorities into the media. Since there are a limited number of educated Romani journalists, training should be increased and promoted by the Government. The Special Rapporteur would thus encourage the initiative taken by NGOs to provide training of Roma media professionals.

III. CONCLUDING OBSERVATIONS

64. The Special Rapporteur welcomes the expressed commitment of the Government of Hungary to democracy, the rule of law and human rights, in particular the right to freedom of opinion and expression. He notes the strong desire to catch up with European standards, which certainly brings dynamism to both the economic and political sphere and the area of individual freedom.

65. The Special Rapporteur notes with satisfaction that the legal environment in Hungary is in accordance with international standards in the field of human rights, particularly the legal guarantees offered to the right

to freedom of opinion and expression. In this context, he welcomes the role played by the Constitutional Court to enlarge and further protect this right, as well as the work accomplished by the three ombudsmen.

66. The Special Rapporteur can assert that freedom of opinion and expression is widely apparent in Hungary. Censorship was abolished some years ago, and the media have been operating in a free and independent environment after the State monopoly was eliminated. Along the same lines, the Special Rapporteur observes that freedom of opinion and expression clearly finds the protection it warrants and any attempt at restriction is closely scrutinized by all sectors of society. The controversy around the proposal to introduce the right of reply in Hungarian law and the withdrawal of the proposal in order to redraft it shows that healthy debates take place, which is strong evidence of democracy in practice.

67. However, freedom of the media has in practice been hindered to some extent by the contingencies on independent or opposition publications of financial pressure combined with pressure from political interests. The Special Rapporteur would like to emphasize his view that the right to freedom of expression should not be restricted by indirect methods or means such as the unequal allocation of publicity spots or through the intervention of political parties to facilitate issuance of licences. In this regard, the Special Rapporteur would like to emphasize that the full enjoyment of the right to freedom of opinion and expression in Hungary can be further strengthened only if the media are less dependent on the patronage of the State, the political parties and financiers.

68. The Special Rapporteur is also concerned at the use and implementation of certain laws to restrict the right to freedom of opinion and expression. He is of the view that a democracy can only work if the citizens and their elected representatives are fully informed. With the exception of a few types of documents, it is desirable to make government documents public in order to allow the citizen to know that public funds are being utilized correctly. Thus, the Special Rapporteur notes, in order for journalists to be able to carry out their role as watchdogs in a democratic society, it is indispensable that they have access, granted on an equitable and impartial basis, to information held by public authorities.

69. The Special Rapporteur welcomes the efforts undertaken in the area of public broadcasting, particularly with regard to pursuing a policy of public service broadcasting. However, he is concerned about allegations of political influence in television, which is attributed to a lack of independence of the National Radio and Television Commission. Indeed, in view of the impact and considerable influence of radio and television, complete independence from political and private interests is of paramount importance.

70. The Special Rapporteur welcomes the positive measures taken by the Government of Hungary to promote and guarantee the right to freedom of opinion and expression of minorities. However, he notes that additional efforts should be undertaken in order to make Hungarian journalists sensitive to the needs of minorities, in particular the Roma, and to eliminate prejudices which prevent their full integration. He would also encourage the promotion of minority media since he considers this to be one of the most important means

through which a minority can preserve its identity. In this context, the civil society, which the Special Rapporteur considers to be very well developed in Hungary, has a great role to play.

71. The Special Rapporteur observes that previous practices and attitudes linked to the former regime are slow to change in many ways. Indeed, as a consequence of the 40 years of communist rule, there are still some reflexes of self-censorship which hamper the development of the press. The Special Rapporteur is nevertheless convinced that the legacy of the past can gradually be overcome through adequate training of journalists, which can be of help in gaining a more well-balanced press.

72. Finally, the Special Rapporteur considers that the experience of Hungary in transforming its political and economic systems and adapting its legal framework to international standards of democracy and human rights can be of value in assisting other countries in the region in their own transition process and in building up constructive cooperation with other countries in the region.

IV. RECOMMENDATIONS

73. On the basis of the principal observations and concerns set out in the previous section, the Special Rapporteur would like to offer the following recommendations for consideration by the Government. In view of the open and constructive exchanges of views that took place during his visit, the Special Rapporteur is convinced that these recommendations will be received in a spirit of shared commitment to strengthening the promotion and protection of the right to freedom of opinion and expression.

74. The Special Rapporteur welcomes the establishment of the three ombudsman institutions but would recommend in addition the setting up of a National Institution on Human Rights.

75. The Government is strongly encouraged to ensure that the protections provided for in the Constitution and the Media Law are always the rule and that any restrictions on the right to freedom of expression remain the exception, bearing in mind that such restrictions must be limited only to those permissible under article 19 of the International Covenant on Civil and Political Rights.

76. The Special Rapporteur urges the Government to ensure that future legislation and its implementation are in compliance with article 19 and other relevant international standards. The Government is also encouraged to consider ways to ensure that the process of introducing future legislation that may affect freedom of expression and media freedom is transparent. The Government may also wish to consider ways of including the media professionals in this process, to continue its cooperation with international organizations and to benefit from the advisory services.

77. The Special Rapporteur urges the Government to consider all necessary measures to limit the financial pressure on the media by providing funding facilities for a certain period of time to newspapers in financial difficulty. This financial support should be accorded through provision of a special

autonomous fund operating on a non-discriminatory basis. With regard to the financing problem of the public service TV, the Special Rapporteur would recommend calling on other ministries to participate in the financing of programmes relevant to them as well as writers and artists to create specific programmes on a cost- and profit-sharing basis. The Special Rapporteur is nevertheless of the view that TV should be barred from direct budgetary support to avoid exclusive dependency on the State exchequer.

78. The Special Rapporteur urges the Government of Hungary to take all necessary steps to ensure the continued independence of the National Radio and Television Commission (ORTT). Steps towards the achievement of this goal should include a review of the membership of ORTT to ensure total independence from the Government and political parties. Appointment procedures could include public hearings and be organized according to criteria providing for diversity and selection depending on professional expertise. In this regard, the Special Rapporteur would recommend that media professionals, intellectuals and representatives of civil society be integrated into ORTT.

79. In accordance with the recommendations of the Committee on the Rights of the Child of June 1998, and the Human Rights Committee of August 1993, the Special Rapporteur encourages the Government to strengthen its efforts to disseminate the principles and provisions of the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights, as well as all other texts in the field of human rights, to NGOs, the mass media and the public at large, including children themselves, in order to increase the accessibility to information by children from rural, poor and minority communities.

80. While the Special Rapporteur notes with appreciation the measures taken by Hungary to improve the living standards of the Roma population, he remains concerned about the persistent pattern of prejudice and discriminatory attitudes towards this minority group. The Special Rapporteur wishes to encourage the Government and the NGO community to provide adequate training to Roma journalists and to use the media to improve the image of the Roma in Hungary. The State should inculcate a strong sense of justice and a realistic idea of integration through a process of innovation in the spheres both of civil society institutions and of the general public. Encouraging signs in this regard were evident which deserve appreciation.

Annex

PERSONS WITH WHOM THE SPECIAL RAPPORTEUR MET DURING HIS VISIT

Officials

Mr. László Tóth Gy., Special Adviser to the Prime Minister of the Republic of Hungary; Mr. Guyla K. Szelei, Director-General for International Organizations, Prof. Dr. Péter Kovács, Head of the Department of Human Rights and Minority Law Directorate, Mr. Csaba Mohi, Senior Counsellor, Ministry for Foreign Affairs; Dr. Háltz Lipót, Deputy State Secretary, Mr. Tamas Ban, Director of the Human Rights Department, Mrs. Paullina Oros, Chief of the Constitutional Law Section, Mr. Zoltan Tallodi, Legal Adviser to the Human Rights Department, Ministry of Justice; Dr. Béla Pokol, Member of Parliament, Chairman of the Committee on Constitutional and Judicial Affairs; Dr. Mátyás Bőrsi, Member of Parliament, Alliance of Free Democrats; Prof. Katalin Gönczöl, Parliamentary Commissioner for Human Rights (Ombudsman); Mr. László Majtényi, Parliamentary Commissioner for Data Protection and Freedom of Information; Mr. Antal Adam, Judge of the Constitutional Court and Professor of Public Law; Dr. János Zanaty, State Secretary, President of the National Council of the Judiciary; Dr. Kósa Magda Kovács, member of Parliament, Chairperson of the Parliamentary Committee for Human Rights, Minorities and Religious Affairs and two of its members.

Media professionals

Mr. Miklós Martin-Kovács, Editor-in-chief, Magyar Radio; Mr. D. Horváth Gábor, Editor-in-chief, Napi Magyarország (Daily Hungary); Ms. Ilona Kocsi, Editor-in-chief, daily Magyar Hirlap (Hungarian News); Dr. Pál Bőtvös, Editor-in-chief, daily Nepszabadsag; Mr. István Wintermantel, Vice Editor-in-chief, daily Magyar Nemzet (Hungarian Nation) and Mr. Lajos Pietsch, Chief of the Foreign Department; Mr. Péter Feledy, Vice-President, MTV (Hungarian TV); Mr. László Lugossy, Vice-President, Duna TV; Mr. István Wisinger, President of the National Association of Hungarian Journalists (MUOSZ) and six of its members; Mr. Csaba Kósa, President of the Community of Hungarian Journalists (MUK) and four of its members; Mr. Miklós Haraszti, member, Presidium of the Board of Trustees, Hungarian Radio Public Foundation; Mr. Mihály Révész T., President of the National Radio and Television Board and four of its members.

Academics

Dr. László Valki, Professor of Public International Law; Dr. Ferenc Mádl, university professor; Dr. István Schlett, university professor; Mr. Gáspár Bíró, Professor at the Law Faculty.

Non-governmental organizations

Mr. Gábor Halmai, member of the "Nyilvanossag" (Publicity Club) and Director of the Human Rights Information and Documentation Centre; Mr. Ferenc Kőszeg, Executive Director of the Hungarian Helsinki Committee; Ms. Gordana Jankovic,

Programme Director, Regional Media Programme, Mr. Orhan Galjus, Programme Manager, Network Media Programme-Roma Media Fund, Open Society Institute; Dr. Marton Ill, President of the Center for Defence of Human Rights; Ms. Anna-Mária Bíró, Project Manager, Minority Rights Group International; Mr. Gábor Miklósi, International Coordinator, Roma Press Centre; Mr. Aladár Horváth, President of the Foundation of Roma Civic Rights.

Others

Mr. István Csillag, Penzugykutato - Rezvenytarsasag (research institute); Mr. István György Tóth, Director, "Tarki" Public Opinion Research Institute, Public Opinion Poll Agency; Dr. György Konrád, writer; Dr. Béla Pomogáts, President of the Hungarian Writers' Association; Mr. Alajos Kauser, President of the Hungarian Communication Authority; Mr. Ádám Levendel, Director of "Szonda Ipsos", Media, Opinion and Market Research Institute.